



## DEPARTMENT OF PUBLIC SAFETY POLICIES & PROCEDURES



### POLICY NUMBER

OPR: 01

EFFECTIVE  
DATE:  
08/29/2011

ORIGINAL  
ISSUED ON:  
07/01/1988

SUBJECT: USE OF FORCE

REVISION NO:

6

### 1.0 PURPOSE

The purpose of this policy is to provide commissioned officers of the Department of Public Safety with guidelines for the use of deadly and non-deadly force.

### 2.0 POLICY

It is the policy of the Department of Public Safety that officers use only the force necessary to effectively bring an incident under control, while protecting the lives of the officer and others and while accomplishing lawful objectives. It must be stressed that the use of force is not left to the unfettered discretion of the involved officers. This is not a subjective determination. The use of force must be objectively reasonable.

### 3.0 APPLICABILITY

This policy applies to all commissioned personnel of the Department of Public Safety.

### 4.0 REFERENCES

- A. Police Use of Force: A Line Officers Guide, *Gillespie, Hart, Boren*, RCM
- B. Reactive Control Model
- C. NMLEA Use of Force Training Curriculum
- D. Section 30-2-6, Justifiable Homicide by Public Officer or Public Employee, NMSA 1978
- E. CALEA Chapter 1- Law Enforcement Role and Authority
- F. IACP National Law Enforcement Policy Center
- G. Police Chief- June, 1996 "Excited Delirium A Two-Fold Problem", *Lt. Alan W. Benner, PhD*, San Francisco Police Department, *S. Marshall Isaacs, M.D.*, San Francisco Department of Health

### 5.0 DEFINITIONS

- A. **Chemical Agents** – Those chemicals agents designed and manufactured for law enforcement purposes, as approved and issued by the Department of Public Safety.
- B. **Deadly Force** – Any use of force that is reasonably likely to cause death.
- C. **ECD Coordinator** – The person(s) assigned by the Chief to track and review all ECD applications for policy, training and equipment issues. This person shall also be responsible for coordinating the training, issuance, and repair of ECDs as needed.

- D. Excited Delirium** – Excited Delirium is a descriptive phrase coined by medical researchers to describe the extreme end of a continuum of drug abuse effects, which normally manifests itself in violent behavior of an individual, who is likely to act in a bizarre and manic way.
- E. Imminent** – Immediate Danger.
- F. Less-Lethal Force** – Any use of force other than that which is considered deadly force. This includes any weaponless physical force or less-lethal weapons used to control or restrain another or to overcome the resistance of another.
- G. Objectively Reasonable** – This term means that in determining the necessity for force and the appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of the threat or resistance presented by the subject, and the level of threat to the community.
- H. Reactive Control Model (RCM)** – A color coded chart illustrating the use of force continuum. It is a tool that guides an officer's use of force actions in response to a subject's behavioral and criminal activity cues.
- I. Reasonable Belief** – Officers must act as a reasonably prudent person under the circumstances and the decision to use force in any degree must be based on reasonableness and necessity, not emotions.
- J. Serious Physical Injury** – An injury that could possibly result in death, cause serious permanent disfigurement or results in long-term loss or impairment of the functioning of any bodily member or organ.

## 6.0 PROCEDURE

### A. Use of Deadly Force

1. Law enforcement officers are authorized to use deadly force, consistent with the Reactive Control Model, to:
  - a. Protect their own lives and the lives of others from what is reasonably believed to be an imminent threat of death or serious bodily harm, or
  - b. To prevent the escape of a fleeing felon who the officer has probable cause to believe poses an imminent threat of death or serious physical injury to the officer or others. When practical, prior to discharge of the firearm, officers shall identify themselves as law enforcement officers and state their intent to use deadly force..
2. Deadly Force Restrictions
  - a. Officers may use deadly force to destroy an animal that represents a threat to public safety or as a humanitarian measure where the animal is seriously injured, when the officer reasonably believes that deadly force can be used without harm to the officer or others.
  - b. Warning shots are prohibited.
  - c. Decisions to discharge a firearm at or from a moving vehicle shall be governed by the Use of Force policy and are prohibited if they present an unreasonable risk to the officer or others.

### B. Use of Less-Lethal Force

1. Where deadly force is not appropriate, officers may use only that level of force that is objectively reasonable to bring an incident under control. Use of less-lethal force shall be consistent with the Reactive Control Model (RCM).
2. Officers are authorized to use department-approved, less-lethal force techniques and issued equipment to:
  - a. Protect self or others from physical harm;
  - b. Restrain or subdue a resistant individual;
  - c. Bring an unlawful situation safely and effectively under control.
3. Refer to Less-Lethal Weapons List for a description of all department issued less-lethal weapons.
  - a. Procedure for Review, Inspection and Approval of less-lethal weapons.

The Training and Recruiting Bureau is responsible for the review, inspection, and approval of Department owned less-lethal weapons prior to them being issued to field employees.

- b. Procedure for Removal of Unsafe less lethal weapon
  1. Prior to conducting any qualification or training with less-lethal weapons, the instructor shall inspect all weapons for serviceability. Commissioned personnel will also inspect their issued weapons for any obvious problems and serviceability.
  2. Should a weapon be found to be unsafe, the weapon shall immediately be removed from service.
  3. The Training and Recruiting Bureau shall be contacted as soon as practical to arrange for a replacement weapon.
  4. The Training and Recruiting Bureau shall replace/repair the unsafe weapon and update the weapons database, as appropriate.
- c. Procedure for Record Keeping
  1. The Training and Recruiting Bureau shall maintain a record of all less lethal weapons approved by the department for official use.
  2. The Training and Recruiting Bureau shall maintain a database listing all department-issued less lethal weapons, including model and serial numbers and, to whom the weapon is issued to.
  3. In the event a weapon is discovered to be unsafe, it shall be replaced according to the procedure described above. The newly issued replacement shall be entered into the database for inventory/tracking purposes.

**C.** DPS commissioned personnel shall carry and use only those lethal and less lethal weapons and ammunitions authorized by the New Mexico State Police Chief.

Clarification added.

**D. Reactive Control Model****1. Verbal Commands**

- a. Verbal direction is not necessarily considered an application of force, but it is the first step on the Reactive Control Model. It is the goal of the officer to generate “voluntary compliance” in order to avoid using force.

**2. Empty Hand Techniques (Physical Force)**

- a. Officers may use empty hand techniques on non-cooperative suspects who resist custody or lawful orders. Empty hand techniques include, but are not limited to, escort positions, distraction techniques, compliance holds, leverage takedowns, impact takedowns, and ground control techniques.

**3. Intermediate Weapons (Less-lethal weapons)**

An intermediate weapon has the potential for causing tissue damage but a low potential of resulting in serious bodily injury when used properly.

- a. Intermediate weapons include, but are not limited to, departmental approved expandable baton, straight baton, riot baton, chemical agents, canine and electronic control devices (ECD).

1. When a primary intermediate weapon is not available, a weaponless technique that involves blunt trauma may be used. These techniques will be classified as intermediate force. The most common weaponless techniques in this category include, elbow strikes, hand strikes, knee strikes and foot kicks.

**2. Chemical Agents**

- a. Pepper spray may be used as a weapon to subdue an unarmed attacker or to overcome resistance likely to result in injury to the officer or others. Pepper spray is not designed to replace the baton or the firearm.
- b. Officers must remember that pepper spray is sometimes ineffective when used against drugged, extremely drunk, or enraged persons.
- c. The officer who uses pepper spray against a suspect is responsible for ensuring that the suspect receives first aid, in accordance with departmental training.

**3. Electronic Control Devices (ECD-Taser)**

- a. An ECD may be used against persons who are actively resisting or exhibiting active aggression or to prevent individuals from harming themselves or others.
- b. When practical, the use of an ECD will be preceded by a verbal warning that force will be used if compliance is not obtained.
- c. Elevated ECD Application Risk Factors – The following factors, where apparent to involved officers, require elevated justification of ECD application. Under the following conditions, the risks of foreseeable direct or secondary injuries to the person are foreseeably elevated. Therefore, officers' justification(s) for ECD application are also elevated. These evaluated risk factors can only be given consideration when the factors

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are reasonably perceived by the officer(s). In less-lethal force situations, when possible, officers should avoid using the ECD on:

1. Persons operating a moving vehicle or machinery.
2. In any environment where the subject's fall could reasonably result in death, such as in an elevated structure or in water.
3. Obviously pregnant female.
4. Persons with apparent debilitating illnesses or the elderly.
5. Children or persons under eighty (80) pounds.
6. Persons in wheelchairs.
7. Persons with pacemakers or other bio-medical devices sensitive to electrical current.
8. On subjects who are passively resisting.
9. On a handcuffed or secured prisoner, absent overtly assaultive, overtly resistive or fleeing behavior (i.e. stiffening up like a board, kicking, head butting, etc) that can not be reasonably dealt with less intrusively.

d. ECDs shall NOT be used in the following circumstances:

1. In a punitive manner.
2. On cooperative subjects.
3. In any environment where an officer knows that a potentially flammable, volatile, or explosive material is present (including but not limited to OC spray with volatile propellant, methamphetamine lab, gasoline, natural gas or propane).
4. From, or at moving vehicles, unless trained to do so as part of a specialty team tactic.

e. Carrying and Storage

1. The device will be carried in an approved holster on the side of the body opposite to the service handgun.
2. The device shall be carried fully armed with the safety on in preparation for immediate use, when authorized.
3. Officers authorized to use the device shall be issued a minimum of one spare cartridge as a backup in case of cartridge failure, the need for redeployment, or in case the first cartridge's wires break during engagement.
4. The spare cartridge shall be stored and carried in a manner consistent with training.

f. Maintenance

1. Each officer will perform a spark test at least once each week to ensure the ECD is charged and properly functioning. These spark tests will be performed in a safe manner and away from people.

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Officers shall document the spark test on a daily recap form or some other form of documentation.

2. If an officer's Digital Power Magazine (DPM) on the X26 reaches 20% or lower, it shall be replaced or recharged, as appropriate. The used DPM will be turned over to the ECD coordinator to be used for training purposes.
3. Only agency approved battery sources shall be used in the ECD.
4. The ECD shall not be left unattended, unless properly stored.

### g. Deployment

1. Prior to deployment, the deploying officer shall announce "Taser, Taser, Taser" to avoid sympathetic fire shootings.
2. In those incidents, when an officer observes obvious signs or symptoms of *excited delirium* in a subject, he/she should arrange for the appropriate backup and medical personnel to be on scene prior to any deployment of the ECD, if practical.

In these instances, a single ECD application should be made before the subject has been exhausted, not in the hope of gaining compliance, but rather to create a window of disablement during which officers can establish physical control over the subject.

3. The ECD shall be aimed at the lower torso (lower center of mass). The targeted area will be the balancing muscles of the pelvic triangle. This will reduce the risk of a probe striking the throat, eyes, face and female breast.
4. Officers shall NOT aim or deploy the ECD to sensitive areas of the body to include the eyes and face.
5. Upon deployment of the ECD, the officer shall energize the subject one time and re-evaluate the subject's response, prior to re-energizing. In any case, the ECD shall be energized the least number of times and no longer than necessary to accomplish the law enforcement objective.
6. The ECD may also be used in certain circumstances in "drive-stun" mode. This involves removing the air cartridge and pressing the unit against an appropriate area of the body consistent with training. It is important to note that when the device is used in this manner, it is:
  - a. Primarily a pain compliance tool.
  - b. Subject to the same deployment guidelines and restrictions as those of the ECD in cartridge deployments.

### h. Post-Deployment Procedures

1. Notify a supervisor if one is not on scene.
2. If needed, or if one is requested by the subject, request an EMS unit to assess the level of injury sustained by the subject.
3. Subjects who were exposed to an ECD shall be treated as follows:

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- a. If the probes penetrate the skin, only certified ECD users, paramedics or emergency room staff may remove the probes at the earliest opportunity.
  - b. If the probes penetrated the skin on the face, head, neck, female breasts, or groin area, only medical staff at a medical facility may remove the probes.
  - c. If the subject displays signs of *excited delirium* prior to or after being energized with an ECD, the subject must immediately receive medical treatment.
  - d. Officers shall provide first aid following removal of the probes by applying an antiseptic and a bandage to the probe sites, as appropriate.
4. Upon removal of the probes from the subject, the officer shall inspect the probe to ensure the barb is attached to the probe. If the barb separated from the probe, the subject must be transported to a medical facility to have the barb removed from the subject's body.
5. Photographs of the affected area should be taken before and after the probes are removed, if practical.
6. The officer shall collect the cartridge, probes, and at least one Anti-Felon Identification (AFID) tag as evidence.
4. Baton
  - a. The baton may be used as a defensive weapon against an aggressive, unarmed attacker when physical force has failed or it has been determined that the use of it is inadequate or inadvisable.
  - b. An officer is not obliged to first use physical restraint on an aggressive, unarmed attacker who is obviously larger or stronger than the officer.
  - c. An officer shall carry the baton at all times when engaged in a police activity that may require custodial action.
  - d. The use of the baton shall be in accordance with training and strikes above the shoulders should be avoided unless the use of deadly force is justified.
5. Firearms
  - a. Used only when deadly force is justified or as listed under the restrictions to deadly force. Firearms may also be drawn as a "Show of Force" in accordance with the Reactive Control Model.
6. Weapons of Opportunity
  - a. If a confrontation suddenly escalates and an officer has no time to draw and/or use a department approved weapon to defend self or others, the officer may use any object at hand for defense or control, provided that the use of force is reasonable, given the existing circumstances.
7. Less-Lethal Munitions
  - a. Includes munitions such as, bean bag rounds, rubber pellet rounds, rubber slug rounds, wooden baton rounds, foam projectiles, stinger balls, pepper



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balls, and electronic control weapons (Taser) which are designed to incapacitate without causing death or serious physical injury. Officers must remember that although designed to incapacitate without causing death or serious physical injury, the possibility of death exists, even when properly deployed.

- b. In order to determine which technique or intermediate weapon will resolve the incident and bring the desired resolution, the officer shall use only that force which is necessary to accomplish the law enforcement mission (establish control).
  - c. Officers will not use less-lethal munitions, unless he/she is trained to use the less-lethal weapon/munitions. Every effort will be made by employee deploying less-lethal munitions to inform all other officers/agencies involved that less-lethal munitions are being used to avoid sympathetic fire. Less-lethal shotguns are designed strictly for use to deploy less-lethal munitions. These shotguns are to be clearly marked and labeled.
  - d. The use of less-lethal munitions is permissible when a person is threatening self, an officer, or another person with physical force and other means of controlling the subject are unreasonable or could cause injury to the officer(s), the subject(s), or others.
  - e. The use of less-lethal munitions is also permissible when other means of lesser or equal force have been ineffective and the threat still exists to the officer(s), subject(s), and others.
8. Disparity of Force
- a. If an officer perceives he/she is at an unequal tactical advantage, the officer should change tactics to return the tactical advantage back in their favor. This can be done by calling for backup if the disparity is immediately recognized or by escalating the use of force needed to complete the law enforcement mission as long as the use of force is reasonable and articulable in the given circumstances.
9. Handcuffing and other Restraints
- a. The mere application of handcuffing an individual does not constitute a use of force. It is considered a safety procedure.
  - b. If the handcuffs are used as leverage control and/or pain compliance, it can be considered use of force.
  - c. Arrestees shall be handcuffed behind their back, with the handcuffs double-locked, unless there is a physical reason which prevents such action; e.g. limited mobility, body mass, etc.
  - d. Other restraint devices such as leg irons are permitted for use in situations where the arrestee has demonstrated combativeness or potential for fleeing. Should these additional restraints be used, the officer shall clearly articulate the reason for use in an offense/incident report.



- e. Reasonable force may be used on a handcuffed or secured prisoner when the handcuffed or secured prisoner is demonstrating overtly resistive or fleeing behavior (i.e. stiffening up like a board, kicking, head butting, etc.) that can not be reasonably dealt with less intrusively. This incident will be properly documented on the offense incident report.
- f. When force is necessary, officers may use only that level of force that is objectively reasonable to bring the subject under control. The use of force shall be consistent with the Reactive Control Model (RCM) which begins with verbal coercion and continues through the use of less-lethal weapons.

### E. Appropriate Medical Aid

Any officer who uses any level of force must ensure that first aid is made available if required. Appropriate medical aid may include increased observation to detect obvious changes in condition, flushing chemical agents from the eyes, applying first aid, evaluation by paramedics, or for more serious or life threatening incidents, immediate aid by medical professionals.

### F. Reporting

- Clarification added.
1. All uses of force shall be documented on an Offense/Incident Report and Use of Force Form. One Use of Force Form shall be completed per incident. The escalation of force used shall be explained in the narrative section of the Use of Force form. Uses of force include, but are not limited to the following;
    - a. Action by an officer that results in, or is alleged to have resulted in injury or death of another person;
    - b. Application of force through the use of weaponless physical force or less-lethal weapons;
    - c. Application of deadly force.
  2. When deadly force is used to destroy an animal, the only reporting documentation required per this policy is an Intra-Departmental Correspondence (IDC) documenting the circumstances of the incident.
  3. When deadly force is used in circumstances other than in destroying an animal, the reporting requirements of DPS policy *OPR: 29, Investigation of Use of Deadly Force Incidents*, will supersede the reporting requirement of this policy. All completed forms must be submitted to a supervisor for review. The use of force shall also be reported to a supervisor as soon as practical after the incident.
  4. Supervisors shall complete the supervisory portion of the Use of Force Form and forward it to the Lieutenant and District Commander in his/her chain of command. The reviewing supervisor, after audio and/or video review of the incident, must make a determination of whether or not follow-up action is necessary and shall indicate his/her decision. The Lieutenant shall review the form, sign it and forward it to the District Commander. The District Commander shall determine and indicate whether the use of force was reasonable and necessary and whether further and additional review was necessary. The District Commander will determine whether there were

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→ any policy violations and comment on the severity of the violation. The commander shall then indicate what type of action was taken.

- a. Once the review process has been completed, the District Commander will sign and forward the Use of Force Form to the Standards Bureau within five (5) days of the completion of the reports for entry into the Early Intervention Personnel System (EIPS). The Standards Bureau will forward the necessary paperwork to the Training and Recruiting Bureau who will be the repository for the Use of Force Forms.
- b. If the District Commander believes that a violation of policy has occurred regarding whether the use of force was reasonable and necessary, the District Commander will forward a Use of Force packet to the Standards Bureau Commander. The packet will include the Use of Force Form, all reports and all audio and/or video recordings associated with the use of force incident. The Standards Bureau Commander will determine the appropriate disposition regarding the incident to determine policy compliance. The disposition shall include but not be limited to an inquiry or an administrative investigation.

The Standard Bureau Commander will forward the Use of Force Form to the Training and Recruiting Bureau after it has been entered into the Early Intervention Personnel System (EIPS).

5. In the case of a negligent discharge, either with a firearm or electronic control device (Taser), the officer shall notify a supervisor immediately. The supervisor shall go on scene to determine if the Investigations Bureau should be notified for further investigation. If further investigation is not necessary, the supervisor shall complete internal correspondence documenting the incident and ensure the Office of the Chief and Standards Bureau are notified. If a negligent discharge results in injury or death, the requirements of Department policy *OPR: 29 Investigation of Use of Deadly Force Incidents*, will supersede this section of this policy.

### G. Training

1. The State Police Training & Recruiting Bureau Commander, or his/her designee, shall ensure that all agency personnel authorized to carry weapons comply with the following guidelines:
  - a. On an annual basis, shall receive in-service training on the Department's use of force policies and demonstrate proficiency with all approved lethal weapons and electronic control devices which the employee is authorized to carry.
  - b. Receive in-service training for other less-lethal weapons and weaponless control techniques every two years.
  - c. The above-listed training shall be accomplished during any phase of firearms qualifications, as determined by the district commander.
  - d. All documentation from the training shall be forwarded to the Training & Recruiting Bureau Commander.
  - e. The District Commander shall provide written documentation for any agency personnel who fail to receive the above-described training describing the circumstances why the employee(s) was unable to meet the requirements. This

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documentation shall be forwarded to the Training & Recruiting Bureau Commander or his/her designee no later than January 31<sup>st</sup> of the following year.

2. The Training & Recruiting Bureau Commander, or his/her designee, shall ensure:
  - a. All proficiency training is monitored by a certified weapons or tactics instructor.
  - b. Training and proficiency is documented.
  - c. Those employees unable to demonstrate proficiency with authorized lethal and less lethal weapons shall receive remedial training and must qualify with those weapons prior to resuming official duties.
  - d. All agency personnel authorized to carry lethal and less-lethal weapons receive copies of and instruction on the department use of force policy prior to being authorized to carry a weapon. The instruction and issuance of the department use of force policy shall be documented and maintained in the Training & Recruiting Bureau.
3. In addition to training required for firearms qualification, officers shall receive agency-authorized training designed to simulate actual shooting situations and conditions, as otherwise necessary, to enhance officer discretion and judgment in using deadly and less-lethal force in accordance with this policy.
4. Officers shall receive training on recognizing signs and symptoms of *excited delirium* during the ECD certification training as well as receiving any updated information concerning this condition during the annual use of force training.

### H. Remedial Training

1. Lethal weapons - Those employees unable to demonstrate proficiency with issued lethal weapons will follow the guidelines under department policy *ADM: 13 Carrying of Firearms*.
2. Electronic Control Devices
  - a. In the event an employee is unable to demonstrate proficiency with an ECD, the weapons or tactics instructor administering the test must immediately inform the employee's District/Bureau Commander/Director and the Office of the Chief.
  - b. The employee failing to demonstrate proficiency shall immediately surrender the ECD to the District/Bureau Commander/Director.
  - c. The District/Bureau Commander/Director shall coordinate with the Training & Recruiting Bureau Commander or his/her designee, to schedule the employee for remedial training. Remedial training may be conducted during the next available State Police Academy recruit school block of instruction pertinent to the failure to demonstrate proficiency or individualized training may be scheduled.
3. Less-Lethal Weapons – Those employees failing to demonstrate proficiency with less-lethal weapons will follow the guidelines outlined above for the ECD.

### I. Annual Review

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1. The Training and Recruiting Bureau commander is responsible for completing an annual documented analysis of all use of force documentation. The analysis shall minimally focus on patterns or trends that could indicate training need; need for equipment upgrades; and/or need for policy modifications.
2. The Training and Recruiting Bureau commander shall complete a report detailing the use of force analysis and forward it to the Office of the Chief no later than the last day of January, following the year being analyzed.
3. The Training and Recruiting Bureau commander may convene a committee to assist with the analysis, based on need.

### J. Departmental Response

1. The Department shall conduct both a criminal and administrative investigation of deadly force incidents.
2. Supervisors shall refer to policy OPR: 29 (*Investigations of Use of Deadly Force in Death or Injury*) for additional guidelines on the use of force. Supervisors are to ensure that these policies are adhered to.
3. Any employee, whose actions or use of force, results in a death or serious physical injury shall be removed from line duty assignment, pending administrative review.

## 7.0 ATTACHMENTS

### A. Use of Force Form

### B. NMSP Authorized Weapons and Munitions List

## 8.0 APPROVAL

APPROVED BY: \_\_\_\_\_  
s/ Gorden E. Eden Jr.  
DPS Cabinet Secretary

DATE: \_\_\_\_\_  
August 29, 2011